

California Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

Thursday, November 18, 1999

San Francisco, California

In Attendance

Chair Kristen Schwenkmeyer
Commissioners Jill A. Dulich, Gerald O'Hara, Tom Rankin, Robert B. Steinberg,
Darrel "Shorty" Thacker, John C. Wilson
Executive Officer Christine Baker

Absent

Commissioner Leonard C. McLeod

I. Call to Order / Adoption of Minutes

Chairperson Schwenkmeyer called the meeting to order at 10:00 am and asked for a motion on the minutes of the August 12, 1999 CHSWC meeting. Commissioner Rankin moved to adopt the minutes, Commissioner Dulich seconded, and the motion passed unanimously.

II. Update on Division of Workers' Compensation Activities

Richard P. Gannon, Administrative Director, Division of Workers' Compensation

DWC AD Richard Gannon, who was introduced to the Commission at the last meeting, returned to provide an update on DWC activities of particular interest to CHSWC.

Rulemaking and Policy Revision Process

Mr. Gannon explained that many of the solutions would require changes to the Workers' Compensation Appeals Board (WCAB) Rules of Practice and Procedure. Since a majority of the seven WCAB members must act to adopt rules, any action must await the appointment of one more commissioner and the designation of one as chair.

The DWC has formed a task force that is working on a revision to the Policy and Procedure Manual. Task Force recommendations on procedures and forms on compromise and releases, continuances, and identification of witnesses, evidence and issues at the first hearing are being shared with the community for comment. The next Task Force meeting is scheduled for December 17 to continue the work.

Proposed Medical Billing Dispute Resolution Process

The DWC is currently reviewing a proposed process to resolve disputes arising over interpretations of the Official Medical Fee Schedule as to the appropriate code for the service.

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This would be accomplished by utilizing a medical bill review unit in DWC. The process is being reviewed by various members of the workers' compensation medical community and a follow-up meeting will be held in December.

Illegally Uninsured Employer Project

Mr. Gannon reported that DWC and the department are in the process of implementing a system to identify illegally uninsured employers and bring them into compliance, based on the CHSWC recommendations and successful pilot projects. Commission staff are assisting in this effort.

DWC Judicial Study

Mr. Gannon said that the DWC is proposing that a study be conducted of its judicial function by an independent group with the credibility and expertise, such as the Commission. The study would identify possible statutory changes to make the system work more efficiently and look at rules and practices that other judicial jurisdictions follow that have addressed problems such as calendaring, casefile movement, proper staffing ratios among judges, secretaries, and clerical staff. In response to a question from Commissioner Steinberg, Mr. Gannon said that he would prefer that the DWC administrative changes proposed in SB 320 not be incorporated into any future legislation until this study is completed.

CHSWC Vote

Commissioner Wilson moved that the Commission staff prepare a proposal for a study of the DWC Judicial Function for consideration at the December meeting. Commissioner Dulich seconded, and the motion passed unanimously.

III. Report on WCRI CompScope™ Study of California

Ann Clayton, Deputy Director, Workers' Compensation Research Institute

Sharon Fox, PhD, Policy Analyst, Workers' Compensation Research Institute

Ms. Clayton and Dr. Fox spoke about the WCRI CompScope™ benchmarking study of California's workers' compensation system, employing over 75 measures of performance outcomes. The study evaluated information through June 1997 on claims from accident years 1994 through 1996. Some of the results of the WCRI study include the following:

- The percentage of claims with medical/legal evaluations decreased and the costs for these exams seem to have stabilized.
- Additional challenges remain in reducing the number and severity of permanent disability claims.
- Despite earlier notice of workplace injuries, the time from insurer notice to the first indemnity payment to the injured worker is lengthening.
- An increase in defense attorney involvement is occurring at the same time that the average defense attorney fee is going down.

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The WCRI Research Brief on the California study was made available to the meeting attendees and is attached. The full report entitled "Benchmarking Performance of Workers' Compensation Systems, CompScope™ Measures for California", will be published in December. A draft of a WCRI report of a benchmarking study of eight states including California will be released in December or January.

Special Note: Commissioner McLeod, who could not attend this meeting, submitted comments on the CompScope™ project, which are attached and thereby incorporated into these minutes.

IV. Report on CHSWC Benefit Notice Study

Juliann Sum, Labor Occupational Health Program, UC Berkeley

Juliann Sum reported that various laws and regulations had been identified as problematic with respect to workers' compensation benefit notices. Ms. Sum also discussed the suggestions for changes to the Labor Code to address those problems. Ms. Sum's presentation, including the problematic laws and regulations and the proposed solutions, is attached.

CHSWC Vote

Commissioner Rankin moved that project staff draft proposed statutory changes, Commissioner O'Hara seconded, and the motion passed unanimously.

Public Comment

Geri Madden of the State Compensation Insurance Fund suggested that the Commission recommend that a comprehensive pamphlet on workers' rights and benefits be provided to each injured worker with their first payment of compensation. (Ms. Madden's suggestion coincides with recommendations of the Benefit Notice Advisory Committee.)

V. Status Report on the CHSWC Study of 'Local' Forms and Procedures

Charles Lawrence Swezey, Esq., Legal Consultant

In May 1999, the Commission invited the workers' compensation community and interested members of the public to submit information and comment on the effectiveness of compliance with Labor Code Section 5500.3. That section requires the WCAB to establish uniform procedures, forms and time of court settings for all offices while prohibiting the local offices from requiring procedures or forms other than from the WCAB. Mr. Swezey recommended that the DWC continue its process to review and address this situation, and when the WCAB gets a chair to review and revise its rules. Mr. Swezey's analysis of the community's response is attached and incorporated into these minutes.

Mr. Swezey also mentioned that there has been some support in the community for a change in the way Compromise and Releases (C&R) are being handled -- if the injured worker is represented by an attorney, the Board should not have to approve the C&R. Mr. Swezey

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recommended a study of this issue and the Commission directed that it be part of the proposal for the study of the DWC Judicial Function.

VI. Discussion of Baseball Arbitration and the Labor Code Section 5814 Issue

Frank Neuhauser, Survey Research Center, UC Berkeley

Thomas J. McBirnie, Esq., Legal Consultant

Frank Neuhauser presented an overview of findings on 'baseball' arbitration and the Labor Code 5814 penalty issue. These analyses were based on data collected about decisions on workers' compensation cases, Mr. Neuhauser expressed his appreciation to everyone in DWC and on the CHSWC staff for their assistance in this endeavor. Mr. Neuhauser's presentations on Baseball Arbitration and the Labor Code 5814 penalties are attached and incorporated into these minutes.

Tom McBirnie commented briefly on Mr. Neuhauser's findings on the 5814 issue at the trial level with respect to Mr. McBirnie's evaluation of penalty cases that had gone to the Court of Appeal on a petition for writ. Mr. McBirnie will provide a comprehensive report to the Commission by the next meeting on this issue.

VII. Update and Discussion Regarding Commission Studies

Christine Baker, CHSWC Executive Officer

Christine Baker said that the informational packet sent to the Commission members before the meeting contained a report on the ongoing CHSWC projects. Ms. Baker then discussed several proposals for possible future activities.

Proposal for Fact-Finding Hearing on WC Anti-Fraud Program

Ms. Baker reported that concern has been expressed in the community about the way that the Workers' Compensation Anti-Fraud Program was being administered. She asked if the Commission wished to host a 'call for information' or a public fact-finding hearing to hear all sides and to provide the Commission with a factual basis for recommending any changes in the anti-fraud statutes that may be warranted.

CHSWC Vote

Commissioner O'Hara moved that the Commission host a public fact-finding hearing on the administration of the workers' compensation anti-fraud program, Commissioner Thacker seconded, and the motion passed unanimously.

Public Comment

Attorney N. Michael Rucka, speaking in support of such a hearing, referred to a case now pending before the WCAB where the injured worker was accused of fraud. Only because the

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injured worker had the funds (in this case over \$100,000) to fight the fraud allegation, he did not have to accept a plea bargain offered to him on multiple occasions. Mr. Rucka submitted a letter that he had written to Commissioner O'Hara, describing the case; Mr. Rucka's letter is attached and incorporated into these minutes.

Proposed CHSWC Forum on Workplace Health and Safety

Ms. Baker asked if the Commission wished to host a forum on workplace health and safety in November 2000. This public, educational forum will provide an opportunity for the health, safety and workers' compensation communities and the public to:

- Discuss and share ideas for workplace injury prevention.
- Develop ideas for a California workplace health and safety agenda for the new millenium.
- Provide information regarding successful techniques in facilitating return to work after workplace injury.
- Present the latest research in workplace safety, health and return-to-work.
- Examine the role of the physician in return-to-work.
- Identify what employers and employees can do 'before' and 'after' to minimize the impact of work injury or illness.
- Consider areas where improvements need to be made.
- Review models of "best practices" facilitating recovery and return-to-work.

CHSWC Vote

Commissioner Rankin expressed strong support and moved that the Commission host a CHSWC Forum on Workplace Health and Safety in November 2000, Commissioner O'Hara seconded, and the motion carried unanimously.

Proposed Project on Workers' Compensation Pharmaceutical Costs

Ms. Baker reported that Commission staff had done preliminary research and determined that the California workers' compensation system for paying pharmaceutical bills results in higher costs than retail, non-occupational and federal and some other states' workers' compensation systems. She asked whether the Commission wished to study this issue.

CHSWC Vote

Commissioner Rankin moved that the Commission engage in a project to assess workers' compensation pharmaceutical costs and identify potential savings, Commissioners Dulich and Thacker seconded, and the motion carried unanimously.

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Proposed Project – California Occupational Research Agenda

Ms. Baker asked if the Commission wished to approve a project to develop a California Occupational Research Agenda (CORA) to guide California's research on the prevention of occupational injuries and illness. She has been advised that in-kind support for this effort would be provided by DWC, the Division of Occupational Safety and Health (DOSH), and Division of Labor Statistics and Research (DLSR).

CHSWC Vote

Commissioner Rankin moved that the Commission approve a project to develop a California Occupational Research Agenda (CORA), Commissioner O'Hara seconded, and the motion carried unanimously.

Proposed Project – Task Force on Alternate or Modified Work in the Construction Industry

Ms. Baker asked if the Commission wished to host a task force to explore possibilities for alternate or modified work in the construction industry as suggested by Commissioner Thacker.

CHSWC Vote

Commissioner Thacker moved that the Commission host such a task force, Commissioners Rankin and Wilson seconded, and the motion carried unanimously.

Baseball Arbitration

Ms. Baker raised several questions on baseball arbitration. The Commission decided to address the possible publication of the report on baseball arbitration, but deferred consideration on whether to recommend repeal of Labor Code Section 4065 or to engage in further data collection.

CHSWC Vote

Commissioner Wilson moved that the Commission issue the report on Baseball Arbitration, Commissioners Steinberg, Thacker and Dulich seconded, and the motion carried unanimously.

VIII. Other Business / Public Questions / Comments

Other Business

Christine Baker announced that the Commission's 1998-1999 Annual Report may contain incomplete statistics reported by DWC on vocational rehabilitation cases. CHSWC has issued a Clarification Notice indicating that statistics on injured worker outcomes following vocational rehabilitation plans did not include agreed-upon plans or alternate or modified work.

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Public Comments

Charles Bruscano

Charles Bruscano, an injured worker and an injured worker advocate with the Association of Injured Workers, suggested that the Commission systematize and institutionalize some method of feedback between injured workers and the state, including an authorized complaint center for injured workers to communicate about the system. Mr. Bruscano said that the CHSWC work on the benefit notices by Juliann Sum is really good and that the Commission may wish to supplement benefit notice information to injured workers. He suggested that CHSWC may wish to consider funding private groups that would further disseminate information about the system to injured workers, with funds coming from a fee levied on all workers' compensation cases that are settled in the state.

Mary Garry

Mary Garry, manager of the workers' compensation program for Hewlett-Packard, urged the Commission to seriously consider the need for and to establish quality data to support further changes to the system.

David Leonard

David Leonard, legal counsel for the California Society of Industrial Medicine and Surgery (CSIMS), had support for DWC's goal to expedite the delivery of medical benefits and reservations about the proposed DWC billing review unit. Mr. Leonard also wanted to clarify that the term "medical cost containment" refers to the costs that insurance carriers are incurring to reduce the medical providers bills and does not refer to the payment of workers' compensation medical benefits.

Armando Crespo

Armando Crespo, an injured worker, submitted a statement to the Commission. Mr. Crespo's statement is attached and thereby included in these minutes.

Pier Distella

Pier Distella, a peace officer of the State of California and an injured worker, asked the Commission for its help and requested that it take the claims of injured workers seriously. Ms Distella urged the Commission to continue addressing issues such as the quality of medical care, vocational rehabilitation, and notification to and communications with injured workers.

Adjournment

Chairperson Schwenkmeyer adjourned the meeting at 1:10 p.m.

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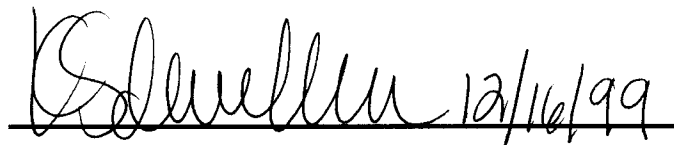
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Future Meetings

The next meeting of the Commission will be held on **December 16, 1999** at the State Building, 230 W. 4th Street in **Los Angeles**.

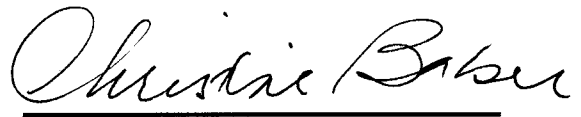
Approved:

Respectfully submitted,



Kristen Schwenkmeyer, Chair

Date



Christine Baker, Executive Officer

Attachments

WCRI Brief of the CompScope™ study of California

Comments about the WCRI CompScope™ study by Commissioner Leonard C. McLeod

Presentation on the CHSWC Project on Benefit Notices by Juliann Sum

Report on Local Forms and Procedures (LC Section 5500.3) by Charles Lawrence Swezey

Letter from Attorney N. Michael Rucka to Commissioner Gerald O'Hara

Presentation on Baseball Arbitration by Frank Neuhauser

Presentation on Labor Code 5814 Penalty Issues by Frank Neuhauser

Statement to the Commission by Armando Crespo, injured worker